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No. 5197 P. 1/7

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No. 79123-1131
Applicant(s): Leonard R. Kilby, et al.			
Application No. 10/670,113	Filing Date 9/24/03	Examiner	Group Art Unit 3721
Invention: PATTERN FORMER AND METHOD OF PATTERN FORMING FOR WRAPPED BAKERY PRODUCTS			
<p>I hereby certify that this <u>Applicant's Post Hearing Brief</u> <small>(Identify type of correspondence)</small> is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. <u>1-571-273-8300</u>)</p> <p>on <u>9-17-07</u> <small>(Date)</small></p> <p style="text-align: right;"> <u>Valeria Carey</u> <small>(Typed or Printed Name of Person Signing Certificate)</small>  <small>(Signature)</small> </p> <p style="text-align: center;">Note: Each paper must have its own certificate of mailing.</p>			

SEP 17 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

LEONARD R. KILBY, et al.

Serial No. 10/670,113

Filed: September 24, 2003

For: Pattern Former and Method of
Pattern Forming for Wrapped
Bakery Products

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BEFORE THE BOARD OF
PATENT APPEALS AND
INTERFERENCES

APPLICANT'S POST HEARING BRIEF

TO THE HONORABLE MEMBERS OF THE BOARD
OF PATENT APPEALS AND INTERFERENCES:

Washington, D.C. 20231

INTRODUCTION

The undersigned attorney for applicant appeared before a panel comprising the Patent and Trademark Office Board of Patent Appeals and Interferences on Thursday, September 13, 2007.

The following is a summary of the arguments presented during the hearing.

CLAIM 64

Pending claim 64 reads as follows:

64. A method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of:

providing a turntable;

forming a pattern of wrapped bakery products on the turntable;

providing a transfer apparatus;

moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and

forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus.

Claim 64 stands rejected as unpatentable under 35 USC § 102(b) in view of U.S. patent number 5,317,859 granted to Schneider et al. on June 7, 1994.

Two of the elements comprising claim 64 are:

--- providing a turntable;

forming a pattern of wrapped bakery products on the turntable; ---

As is clearly shown in Figure 2 and described in the first paragraph of the Schneider et al. specification, the Schneider et al. device forms the patterns 21 thereof prior to the positioning of wrapped bakery products on the turntable assembly 70.

Operation of the turntable assembly 70 is described in the paragraph extending from line 26 through line 48 of column 5 of the Schneider et al. patent and particular sentence extending from line 42 through line 48. As will be apparent therefrom the disks 63 comprising the powered disk conveyor 61 rotate continuously such that wrapped bakery products are continuously moved when the support plate 76 is its lowered orientation and are prevented from moving when the support plate 76 is in its raised orientation. Thus, as was pointed out during the hearing, it is simply not possible to form a pattern of wrapped bakery products on the turntable assembly 70 because the continuous rotation of the disks 63 comprising the powered disk conveyor 61 would prevent positioning of wrapped bakery products in contact with one another which is required in order to form a pattern thereof.

Claim 64 further includes the following two elements:

- - - moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and
- forming a subsequent pattern of wrapped bakery products on a turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of a transfer apparatus. - - -

During the hearing one of the Examiners suggested that perhaps the transfer pusher assembly 90 and the rotor assembly 110 of the Schneider et al. patent could be considered to be the transfer apparatus of applicant's claim 64. Applicant respectfully points out that there is no such suggestion in the Schneider et al. patent, but even if such a combination is assumed the resulting "transfer apparatus" would not transfer patterns of wrapped bakery products directly from the turntable 70 to a baking pan because the only path of travel disclosed by the Schneider et al. patent is movement of patterns of wrapped bakery products from the turntable assembly onto the conveyor 81 comprising the transfer pusher assembly, then across the conveyor 81 under the action of the pusher vane 100 and downwardly through the complicated components of the rotor assembly 110, and only thereafter into bakery pans.

It is therefore respectfully submitted that the Schneider et al. patent relied upon by the Examiner does not anticipate applicant's invention as set forth in claim 64 under the provisions of 35 U.S.C. § 102(b) despite the assertion thereof by the Examiner in the Final Office Action.

CLAIM 63

Pending claim 63 reads as follows:

63. A method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of:

providing a grouping apparatus for receiving individual wrapped bakery products;

arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus;

providing a turntable;

providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable; and

arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus.

As was stated during the hearing applicant concedes that the first three elements of claim 63 are anticipated by Euverard et al. patent number 4,522,292 which was relied upon by the Examiner in the rejection of claim 63 in the Final Office Action. Applicant respectfully submits, however, that Euverard et al. does not anticipate the last two elements of claim 63 and therefore does not anticipate claim 63 under the provisions of 35 U.S.C. § 102(b).

The penultimate element of claim 63 requires the use of a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable. No such structure is taught or remotely suggested by Euverard et al. To the contrary the grouping

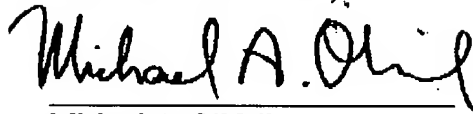
conveyor 25 of the Euverard et al. is utilized therein to transfer groups of wrapped bakery products onto the turntable 65. Since Euverard et al. does not employ a transfer apparatus of the type described and claim by applicant, but instead utilizes the grouping conveyor 25 to perform the transfer function Euverard et al. does not anticipate applicant's claim 63 under the provisions of 35 U.S.C. § 102(b).

Additionally, the last element of claim 63 is not met by Euverard et al. As was pointed out by applicant's attorney during the hearing the fact that Euverard et al. employs the grouping conveyor 25 to transfer patterns of wrapped bakery products onto the turntable 65 entirely negates the possibility of forming a subsequent pattern of wrapped bakery products on the grouping conveyor 25 during transfer of a previous pattern of wrapped bakery products onto the turntable. Simply put, there is no structure whatsoever disclosed or described in Euverard et al. for performing such a function.


It is therefore respectfully submitted that despite the Examiner's contention to the contrary our claim 64 nor claim 63 is anticipated under 35 U.S.C. § 102(b) as asserted by the Examiner. Reversal of the final rejection and allowance of claims 63 and 64 are therefore respectfully requested.

Respectfully submitted,

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